

1 AN ACT

2 relating to merger agreements among certain hospitals; authorizing
3 fees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle F, Title 4, Health and Safety Code, is
6 amended by adding Chapter 314A to read as follows:

7 CHAPTER 314A. MERGER AGREEMENTS AMONG CERTAIN HOSPITALS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 314A.001. DEFINITIONS. In this chapter:

10 (1) "Attorney general" means the attorney general of
11 Texas or any assistant attorney general acting under the direction
12 of the attorney general of Texas.

13 (2) "Designated agency" means the state agency
14 designated by the governor under Section 314A.004.

15 (3) "Hospital" means a nonpublic general hospital that
16 is licensed under Chapter 241 and is not maintained or operated by a
17 political subdivision of this state.

18 (4) "Merger agreement" or "merger" means an agreement
19 among two or more hospitals for the consolidation by merger or other
20 acquisition or transfer of assets by which ownership or control
21 over substantially all of the stock, assets, or activities of one or
22 more previously licensed and operating hospitals is placed under
23 the control of another licensed hospital or hospitals or another
24 entity that controls the hospitals.

1 (5) "State agency" means a department, commission,
2 board, office, or other agency in the executive branch of state
3 government that is created by the constitution or a statute of this
4 state.

5 Sec. 314A.002. APPLICABILITY. This chapter applies only to
6 a merger agreement among hospitals each of which is located within a
7 county that:

8 (1) contains two or more hospitals; and

9 (2) has a population of:

10 (A) less than 100,000 and is not adjacent to a
11 county with a population of 250,000 or more; or

12 (B) more than 100,000 and less than 150,000 and
13 is not adjacent to a county with a population of 100,000 or more.

14 Sec. 314A.003. LEGISLATIVE FINDINGS AND PURPOSES; GRANT OF
15 ANTITRUST IMMUNITY. (a) The legislature finds that:

16 (1) a merger among hospitals may benefit the public by
17 maintaining or improving the quality, efficiency, and
18 accessibility of health care services offered to the public; and

19 (2) the benefits described by Subdivision (1)
20 resulting from the merger may outweigh any anticompetitive effects
21 of joining together competitors to address unique challenges in
22 providing health care services in rural areas.

23 (b) The legislature believes it is in the state's best
24 interest to supplant state and federal antitrust laws with a
25 process for regulatory approval and active supervision by the
26 designated agency as provided by this chapter. It is the intent of
27 the legislature that this chapter immunize from all federal and

1 state antitrust laws the execution of merger agreements approved
2 under this chapter and post-merger activities supervised under this
3 chapter.

4 (c) Nothing in this chapter affects antitrust immunity that
5 may be provided through another provision of state law.

6 Sec. 314A.004. DESIGNATION OF SUPERVISING STATE AGENCY.

7 (a) The governor shall designate an appropriate state agency,
8 other than the office of the attorney general, to:

9 (1) review and approve or deny applications submitted
10 under this chapter for certificates of public advantage; and

11 (2) supervise as provided by Subchapter C the
12 activities for which a certificate of public advantage is issued.

13 (b) After the governor designates a state agency under
14 Subsection (a), the governor may designate another appropriate
15 state agency under that subsection at any time.

16 (c) A change in the designation of a state agency made under
17 this section does not affect the validity of any action taken under
18 this chapter by a predecessor designated agency.

19 Sec. 314A.005. RULEMAKING. The designated agency shall
20 adopt rules for the administration and implementation of this
21 chapter.

22 SUBCHAPTER B. CERTIFICATE OF PUBLIC ADVANTAGE

23 Sec. 314A.051. REVIEW AND CERTIFICATION OF MERGER
24 AGREEMENTS REQUIRED. (a) Two or more hospitals may negotiate and
25 enter into a merger agreement, subject to approval by the
26 designated agency as provided by this subchapter.

27 (b) No merger agreement shall receive immunity under this

1 chapter unless the designated agency issues a certificate of public
2 advantage governing the merger agreement.

3 Sec. 314A.052. APPLICATION. (a) One or more parties to a
4 merger agreement may submit an application to the designated agency
5 for a certificate of public advantage governing the merger
6 agreement. The application must include a written copy of the
7 merger agreement and describe the nature and scope of the merger.

8 (b) If an applicant believes the documents or other
9 information required to be submitted with an application under
10 Subsection (a) contains proprietary information that is required to
11 remain confidential, the applicant shall:

12 (1) clearly identify the information; and

13 (2) submit duplicate applications, one application
14 that has complete information for the designated agency's use and
15 one redacted application that will be made available for public
16 release.

17 (c) A copy of the application and copies of all additional
18 related materials must be submitted to the attorney general and to
19 the designated agency at the same time.

20 Sec. 314A.053. APPLICATION FEE. (a) The designated agency
21 may assess a fee for filing an application under Section 314A.052 in
22 an amount not to exceed \$75,000. The amount of the fee must be
23 sufficient to cover the reasonable costs of the designated agency
24 and attorney general in reviewing and approving or denying
25 applications under this subchapter.

26 (b) Fees collected under this section may be appropriated to
27 the designated agency for purposes of covering costs relating to

1 the implementation and administration of this chapter, including
2 the supervision of hospitals under this chapter.

3 Sec. 314A.054. REVIEW OF APPLICATION BY DESIGNATED AGENCY;
4 GRANT OR DENIAL OF APPLICATION. (a) The designated agency shall
5 review an application for a certificate of public advantage in
6 accordance with the standard prescribed by Section 314A.056(a)(1).

7 (b) The designated agency shall grant or deny the
8 application not later than the 120th day after the date of the
9 filing of the application. The designated agency's decision must:

- 10 (1) be in writing;
11 (2) specify the basis for the decision; and
12 (3) provide a copy of the decision to the applicants on
13 the date of the decision.

14 Sec. 314A.055. REVIEW OF APPLICATION BY ATTORNEY GENERAL.

15 (a) The attorney general shall review an application for a
16 certificate of public advantage and all supporting documents and
17 information provided by the applicants. On completion of the
18 review and subject to Subsection (b), the attorney general shall
19 advise the designated agency whether:

20 (1) the proposed merger agreement would likely benefit
21 the public by maintaining or improving the quality, efficiency, and
22 accessibility of health care services offered to the public; and

23 (2) the likely benefits resulting from the proposed
24 merger agreement outweigh any disadvantages attributable to a
25 reduction in competition that may result from the proposed merger.

26 (b) The attorney general shall review an application for a
27 certificate of public advantage as soon as practicable, taking into

1 consideration the deadline prescribed by Section 314A.054.

2 (c) If the attorney general advises the designated agency to
3 deny an application, the attorney general shall state the basis and
4 reasons for the recommended denial.

5 Sec. 314A.056. ISSUANCE OF CERTIFICATE OF PUBLIC ADVANTAGE.

6 (a) The designated agency, after reviewing the application and
7 consulting with the attorney general in accordance with Section
8 314A.055, shall issue a certificate of public advantage for a
9 merger agreement if:

10 (1) the designated agency determines under the
11 totality of the circumstances that:

12 (A) the proposed merger would likely benefit the
13 public by maintaining or improving the quality, efficiency, and
14 accessibility of health care services offered to the public; and

15 (B) the likely benefits resulting from the
16 proposed merger agreement described by Paragraph (A) outweigh any
17 disadvantages attributable to a reduction in competition that may
18 result from the proposed merger; and

19 (2) the application:

20 (A) provides specific evidence showing that the
21 proposed merger would likely benefit the public as described by
22 Subdivision (1)(A);

23 (B) explains in detail how the likely benefits
24 resulting from the proposed merger agreement outweigh any
25 disadvantages attributable to a reduction in competition as
26 described by Subdivision (1)(B); and

27 (C) sufficiently addresses the factors listed in

1 Subsection (b) and any other factor the designated agency may
2 require based on the circumstances specific to the application.

3 (b) In making the determination under Subsection (a)(1),
4 the designated agency shall consider the effect of the merger
5 agreement on the following nonexclusive list of factors:

6 (1) the quality and price of hospital and health care
7 services provided to citizens of this state;

8 (2) the preservation of sufficient hospitals within a
9 geographic area to ensure public access to acute care;

10 (3) the cost efficiency of services, resources, and
11 equipment provided or used by the hospitals that are a party to the
12 merger agreement;

13 (4) the ability of health care payors to negotiate
14 payment and service arrangements with hospitals proposed to be
15 merged under the agreement; and

16 (5) the extent of any reduction in competition among
17 physicians, allied health professionals, other health care
18 providers, or other persons providing goods or services to, or in
19 competition with, hospitals.

20 (c) The designated agency may include terms or conditions of
21 compliance in connection with a certificate of public advantage
22 issued under this subchapter if necessary to ensure that the
23 proposed merger likely benefits the public as specified in
24 Subsection (a)(1).

25 Sec. 314A.057. RECORDS. The designated agency shall
26 maintain records of all merger agreements the designated agency has
27 approved under this chapter, including any terms or conditions of

1 issuing a certificate of public advantage that are imposed by the
2 designated agency.

3 Sec. 314A.058. TERMINATION OF CERTIFICATE OF PUBLIC
4 ADVANTAGE BY HOSPITAL. A hospital resulting from a merger
5 agreement approved under this chapter may voluntarily terminate its
6 certificate of public advantage by giving the designated agency
7 notice at least 30 days before the date of the termination.

8 Sec. 314A.059. ANNUAL REVIEW OF CERTIFICATE. (a) The
9 designated agency shall annually review an approved certificate of
10 public advantage.

11 (b) The attorney general may annually review an approved
12 certificate of public advantage.

13 (c) The designated agency may not complete its annual review
14 of an approved certificate of public advantage under this section
15 until:

16 (1) the attorney general informs the designated agency
17 whether the attorney general intends to conduct any review of the
18 certificate of public advantage as authorized under this section;
19 and

20 (2) if the attorney general informs the designated
21 agency of the attorney general's intent to conduct a review of an
22 entity's approved certificate of public advantage, the attorney
23 general has had the opportunity to conduct the review.

24 SUBCHAPTER C. SUPERVISION OF MERGED HOSPITALS UNDER APPROVED
25 MERGER AGREEMENT

26 Sec. 314A.101. SUPERVISION OF MERGED HOSPITALS. The
27 designated agency shall supervise in the manner provided by this

1 subchapter each hospital operating under a certificate of public
2 advantage issued under this chapter to ensure that the immunized
3 conduct of a merged entity furthers the purposes of this chapter.

4 Sec. 314A.102. RATE REVIEW. (a) A change in rates for
5 hospital services by a hospital operating under a certificate of
6 public advantage issued under this chapter may not take effect
7 without prior approval of the designated agency as provided by this
8 section.

9 (b) At least 90 days before the implementation of any
10 proposed change in rates for inpatient or outpatient hospital
11 services and, if applicable, at least 60 days before the execution
12 of a reimbursement agreement with a third party payor, a hospital
13 operating under a certificate of public advantage shall submit to
14 the designated agency:

15 (1) any proposed change in rates for inpatient and
16 outpatient hospital services;

17 (2) if applicable, any change in reimbursement rates
18 under a reimbursement agreement with a third party payor;

19 (3) for an agreement with a third party payor, other
20 than an agreement described by Subdivision (4) or in which rates are
21 set under the Medicare or Medicaid program, information showing:

22 (A) that the hospital and the third party payor
23 have agreed to the proposed rates;

24 (B) whether the proposed rates are less than the
25 corresponding amounts in the producer price index published by the
26 Bureau of Labor Statistics of the United States Department of Labor
27 relating to the hospital services for which the rates are proposed

1 or a comparable price index chosen by the designated agency if the
2 producer price index described by this paragraph is abolished; and

3 (C) if the proposed rates are above the
4 corresponding amounts in the producer price index as described by
5 Paragraph (B), a justification for proposing rates above the
6 corresponding amounts in the producer price index;

7 (4) to the extent allowed by federal law, for an
8 agreement with a managed care organization that provides or
9 arranges for the provision of health care services under the
10 Medicare or Medicaid program, information showing:

11 (A) whether the proposed rates are different from
12 rates under an agreement that was in effect before the date the
13 applicable merger agreement took effect;

14 (B) whether the proposed rates are different from
15 the rates most recently approved by the designated agency for the
16 applicable hospital, if the designated agency has previously
17 approved rates for the applicable hospital following the issuance
18 of the certificate of public advantage under this chapter that
19 governs the hospital; and

20 (C) if the proposed rates exceed rates described
21 by Paragraph (A) or (B), a justification for proposing rates in
22 excess of those rates; and

23 (5) any information concerning costs, patient volume,
24 acuity, payor mix, and other information requested by the
25 designated agency.

26 (c) After reviewing the proposed change in rates submitted
27 under Subsection (b), the designated agency shall approve or deny

1 the proposed rate change. The designated agency shall approve the
2 proposed rate change if the designated agency determines that:

3 (1) the proposed rate change likely benefits the
4 public by maintaining or improving the quality, efficiency, and
5 accessibility of health care services offered to the public; and

6 (2) the proposed rate does not inappropriately exceed
7 competitive rates for comparable services in the hospital's market
8 area.

9 (d) If the designated agency determines that the proposed
10 rate change does not satisfy Subsection (c)(1) or (2), the
11 designated agency shall deny or modify the proposed rate change.

12 (e) The designated agency shall notify the hospital in
13 writing of the agency's decision to approve, deny, or modify the
14 proposed rate change not later than the 30th day before the
15 implementation date of the proposed change.

16 Sec. 314A.103. ANNUAL REPORT. Each hospital operating
17 under a certificate of public advantage shall submit an annual
18 report to the designated agency. The report must include:

19 (1) information about the extent of the benefits
20 attributable to the issuance of the certificate of public
21 advantage;

22 (2) if applicable, information about the hospital's
23 actions taken:

24 (A) in furtherance of any commitments made by the
25 parties to the merger; or

26 (B) to comply with terms imposed by the
27 designated agency as a condition for approval of the merger

1 agreement;

2 (3) a description of the activities conducted by the
3 hospital under the merger agreement;

4 (4) information relating to the price, cost, and
5 quality of and access to health care for the population served by
6 the hospital; and

7 (5) any other information required by the designated
8 agency to ensure compliance with this chapter, including
9 information relating to compliance with any terms or conditions for
10 issuance of the certificate of public advantage.

11 Sec. 314A.104. CORRECTIVE ACTION PLAN. (a) The designated
12 agency shall require a hospital operating under a certificate of
13 public advantage to adopt a plan to correct a deficiency in the
14 hospital's activities if the designated agency determines that an
15 activity of the hospital:

16 (1) does not benefit the public as described by
17 Section 314A.056(a)(1)(A); or

18 (2) no longer meets the standard prescribed by Section
19 314A.056(a)(1).

20 (b) The corrective action plan must include each provision
21 required by the designated agency and must be submitted at the
22 agency's direction.

23 Sec. 314A.105. SUPERVISION FEE. (a) The designated agency
24 may assess an annual supervision fee in an amount that is at least
25 \$75,000 but not more than \$200,000 against each hospital operating
26 under a certificate of public advantage under this chapter. The
27 amount of the fee imposed on hospitals under this subsection must be

1 based on the assessment by the designated agency of the amount
2 needed to cover the reasonable costs incurred by the designated
3 agency in supervising hospitals under this subchapter and in
4 implementing and administering this chapter.

5 (b) Fees collected under this section may be appropriated to
6 the designated agency for purposes of covering costs relating to
7 the implementation and administration of this chapter, including
8 the supervision of hospitals under this chapter.

9 SUBCHAPTER D. ENFORCEMENT AUTHORITY BY DESIGNATED AGENCY

10 Sec. 314A.151. INVESTIGATION; REVOCATION OF CERTIFICATE.

11 With respect to each hospital resulting from a merger agreement for
12 which the designated agency issued a certificate of public
13 advantage under this chapter, and to ensure that the hospital's
14 activities continue to benefit the public under the standard
15 prescribed by Section 314A.056(a)(1) and the purposes of this
16 chapter, the designated agency may:

17 (1) investigate the hospital's activities; and

18 (2) require the hospital to perform a certain action
19 or refrain from a certain action or revoke the hospital's
20 certificate of public advantage, if the designated agency
21 determines that:

22 (A) the hospital is not complying with this
23 chapter or a term or condition of compliance with the certificate of
24 public advantage governing the hospital's immunized activities;

25 (B) the designated agency's approval and
26 issuance of the certificate of public advantage was obtained as a
27 result of material misrepresentation;

1 (C) the hospital has failed to pay any fee
2 required under this chapter; or

3 (D) the benefits resulting from the approved
4 merger no longer outweigh the disadvantages attributable to the
5 reduction in competition resulting from the approved merger.

6 Sec. 314A.152. JUDICIAL REVIEW OF DESIGNATED AGENCY ACTION.

7 (a) A person aggrieved by a decision of the designated agency in
8 granting, denying, or refusing to act on an application for a
9 certificate of public advantage submitted under Subchapter B or
10 revoking a certificate of public advantage issued under this
11 chapter may appeal the final order by filing a petition for judicial
12 review in a district court of Travis County.

13 (b) The filing of a petition for judicial review of a
14 decision by the designated agency to revoke a certificate of public
15 advantage stays enforcement of the agency's decision.

16 (c) Not later than the 45th day after the date a person files
17 a petition for judicial review under this section, the designated
18 agency shall submit to the district court the original copy or a
19 certified copy of the entirety of the agency's record regarding the
20 decision under review. By stipulation of all parties, the record
21 may be shortened. The district court may require or permit later
22 corrections or additions to the record. The district court may
23 extend the period prescribed by this subsection for submitting the
24 agency's record to the court.

25 (d) The district court shall conduct the review sitting
26 without a jury.

27 (e) The district court may reverse a decision by the

1 designated agency regarding revocation of a certificate of public
2 advantage if the court finds that the decision is:

3 (1) in violation of a constitutional or statutory
4 provision;

5 (2) in excess of the agency's statutory authority;

6 (3) made through unlawful procedure;

7 (4) arbitrary or capricious or characterized by abuse
8 of discretion or clearly unwarranted exercise of discretion; or

9 (5) unsupported by substantial and material evidence
10 in light of the record as a whole.

11 (f) Under Subsection (e)(5), in determining the
12 substantiality of the evidence, the district court:

13 (1) shall consider other evidence that detracts from
14 the substantiality; and

15 (2) may not substitute its judgment for the judgment
16 of the designated agency on the weight of the evidence as to a
17 question of fact.

18 (g) The district court shall issue a written decision
19 setting forth the court's findings of fact and conclusions of law.
20 The designated agency shall add the court's decision to the agency's
21 record.

22 SUBCHAPTER E. ATTORNEY GENERAL INVESTIGATION AND ENFORCEMENT

23 AUTHORITY

24 Sec. 314A.201. CIVIL INVESTIGATIVE DEMAND. (a) The
25 attorney general, at any time after an application is filed under
26 Section 314A.052 and before the designated agency makes a
27 determination on the application, or in connection with the

1 agency's annual review of a certificate of public advantage under
2 Section 314A.059, may require by civil investigative demand the
3 attendance and testimony of witnesses and the production of
4 documents in Travis County or the county in which the applicants are
5 located for the purpose of investigating whether the merger
6 agreement satisfies or, after issuance of the certificate of public
7 advantage, continues to satisfy the standard prescribed by Section
8 314A.056(a)(1).

9 (b) All nonpublic documents produced for and testimony
10 given to the attorney general under Subsection (a) are subject to
11 the prohibitions on disclosure and use under Section 15.10(i),
12 Business & Commerce Code.

13 (c) The attorney general may seek an order from the district
14 court compelling compliance with a civil investigative demand
15 issued under this section.

16 Sec. 314A.202. ACTION TO REVOKE CERTIFICATE OF PUBLIC
17 ADVANTAGE FOLLOWING CHANGED CIRCUMSTANCES. (a) If, following an
18 annual review of a certificate of public advantage, the attorney
19 general determines that as a result of changed circumstances the
20 benefits resulting from a certified merger agreement as described
21 by Section 314A.056(a)(1)(A) no longer outweigh any disadvantages
22 attributable to a reduction in competition resulting from the
23 merger agreement, the attorney general may bring an action in a
24 district court in Travis County seeking to revoke the certificate
25 of public advantage in accordance with the procedures prescribed by
26 this section.

27 (b) Except as provided by Subsection (c), in an action

1 brought under this section, the attorney general has the burden of
2 establishing by clear and convincing evidence that as a result of
3 changed circumstances the benefits resulting from the certified
4 merger agreement and the unavoidable costs of revoking the
5 certificate of public advantage are outweighed by disadvantages
6 attributable to a reduction in competition resulting from the
7 merger agreement.

8 (c) In any action brought under this section, if the
9 attorney general first establishes by clear and convincing evidence
10 that the designated agency's certification was obtained as a result
11 of material misrepresentation to the designated agency or the
12 attorney general or as the result of coercion, threats, or
13 intimidation directed toward any party to the merger agreement,
14 then the parties to the merger agreement bear the burden of
15 establishing by clear and convincing evidence that despite changed
16 circumstances the benefits resulting from the certified merger
17 agreement and the unavoidable costs of revoking the certificate of
18 public advantage are not outweighed by disadvantages attributable
19 to a reduction in competition resulting from the merger agreement.

20 SECTION 2. As soon as practicable after the effective date
21 of this Act, the governor shall designate a state agency under
22 Section 314A.004, Health and Safety Code, as added by this Act.

23 SECTION 3. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 3301 was passed by the House on May 9, 2019, by the following vote: Yeas 133, Nays 4, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3301 on May 24, 2019, by the following vote: Yeas 134, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3301 was passed by the Senate, with amendments, on May 21, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor